

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GARY TASSONE,
Petitioner,

v.

DIRECTOR SALISBURY,
Respondent,

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) No. 1:23-00280-JJM-LDA
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ORDER

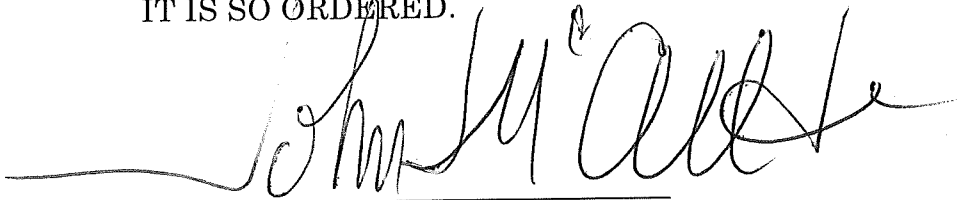
Before the Court is Petitioner Gary Tassone's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (ECF No. 1), arising from his January 28, 1997, state court conviction for first-degree murder, and related motions (ECF Nos. 2, 6, 7). The State has moved to dismiss the Petition (ECF No. 10) because Mr. Tassone has not exhausted his state court remedies.

Mr. Tassone's Habeas Petition is again premature.¹ His application for writ of certiorari, relating to the denial of his state post-conviction petition, is pending before

¹ Mr. Tassone has filed two previous habeas petitions in this Court. He filed the first, *Tassone v. Wall*, CA 17-596-JJM-LDA, on December 26, 2017, after the Rhode Island Supreme Court's remand of his state application for post-conviction relief but before the Superior Court had conducted a hearing on the application. *See Tassone v. State*, No. PM-2000-4624, 2021 WL 5492871, at *1 (R.I. Super. Ct. Oct. 22, 2021). The Court dismissed the first petition on March 21, 2018, because Mr. Tassone had not exhausted his state court remedies. *See* Docket in *Tassone v. Wall*, CA 17-596-JJM-LDA (Text Order dated March 21, 2018). On April 28, 2021, Mr. Tassone filed his second petition, *Tassone v. Coyne-Fague*, CA 21-189-JJM-LDA, after the remand hearing but before the Superior Court issued its decision, *see Tassone v. State*, 2021 WL 5492871, at *1. On December 19, 2021, the Court dismissed the second petition, again on exhaustion grounds. *See* Docket in *Tassone v. Coyne-Fague*, CA 21-189-JJM-LDA (Text Order dated December 19, 2021).

the Rhode Island Supreme Court. *See Tassone v. State*, Case No. SU-2021-0314-MP.² Accordingly, the Court GRANTS the State's Motion to Dismiss (ECF No. 10) and DISMISSES the Petition (ECF No. 1) without prejudice to being filed after he has fully exhausted his state court remedies. In addition, the Court DENIES all pending motions (ECF Nos. 2, 6, 7) in this case as moot.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.
Chief Judge
United States District Court

October 4, 2023

² The appeal is currently in the pre-briefing stage. *See* ECF No. 10-3 (Case Summary in SU-2021-0314-MP). Thus, despite Mr. Tassone's complaints of "inordinate delay" by the State, Petition at 7, 8, 13, 14 the case is progressing, *see* ECF No. 10-3.